

From: Linda Lane <lanelm@earthlink.net> on 03/07/2004 03:30:23 PM
Subject: Availability of Funds and Collection of Checks

March 7, 2004

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System

Dear Chairman:

We welcome the opportunity to comment on the proposed rule for implementing the Check 21 act.

We fully understand the concepts and purported benefits of the Act, but we have the following concerns and comments.

1. In a global economy, banks and other persons will be able to participate in substitute check transactions without being subject to enforcement under the Uniform Commercial Code. We are concerned that the rulemaking does not protect consumers from fraudulent transactions initiated outside the jurisdiction of the United States. Persons outside the United States will be able to extract funds from consumer accounts and consumers will have no recourse. The rulemaking should limit applicability of Check 21 to United States entities.

2. The rulemaking does not allow individual consumers to opt out, or to prevent a draft on their account by substitute check, even if that account is mainly a brokerage or mutual fund account. The rulemaking should specifically require that banks allow the creation of accounts that are not subject to substitute checks.

3. The rulemaking expands the definition of account to mean any deposit at a bank. This will prevent a consumer from protecting their money by placing it in savings accounts or certificates of deposit, greatly reducing the safety of the banking system. The definition of account should not be expanded by the rulemaking.

4. We are concerned that corrupt bank employees, other persons with access to substitute check data, and their accomplices will be able to generate and cash fraudulent substitute checks using MICR line data from clearing substitute checks. The rulemaking should allow consumers and businesses to specify the number and type of substitute checks that can be accepted for payment.

5. We are concerned that the Act and the rulemaking limits the liability of banks for the money entrusted to their care. We understand the benefit to banks and businesses in accelerating check clearance and increasing the float on cleared funds. We are disappointed that no commensurate increased fiduciary duty for the customers' funds is mandated in the rulemaking. We request that the rulemaking make bank officers personally liable for negligence or misconduct on the part of bank employees with respect to Check 21 transfers of funds held in Federally insured accounts.

6. The rulemaking should clearly protect consumers by increasing fiduciary responsibility in return for the real-time movement of dollars. Banks who enter into Check 21 agreements must be responsible for returning the full amount of monies in dispute to individual accounts within 24 hours. Time schedule and clear resolutions must be outlined for banks without increased impact to customers or customer accounts. Therefore by entering into Check 21 agreements with others it

is the Banks' sole responsibility to pursue whatever legal processes or actions necessary as outlined in the rulemaking to obtain restitution of incorrectly paid out monies.

7. We are concerned that the image of a signature is not, and inherently cannot be the same as a real 'wet ink' signature. The rulemaking should require that the original check be returned to the consumer as final proof of payment, even when processing is by means of a substitute check.

8. We are concerned that Check 21 creates a duplicate method of debiting consumer accounts without processing the original check through to the consumer's bank, namely: 1) a substitute check produced under Check 21 and 2) an electronic debit created by ACH processing of data from the MICR line of the check. The rulemaking should require banks to institute uniform measures to block duplicate payments of a check, and make the bank responsible for immediate recredit of the entire sum of such a check regardless of the dollar amount of the check.

9. The rulemaking should encourage banks to credit payments to consumers' accounts by the close of the banking day in all cases where the bank does not suspect fraud. This will allow consumers to share in the benefits of Check 21.

10. The rulemaking sets a limit of \$2500 on immediate recredit to consumer accounts. We do not regard limit as serving any practical purpose. Recent US Government statistics show that the median balance in all transaction accounts of all American families is about \$3300. Since disputes over transfers greater than the total balance in an account are likely to be very rare, we recommend that this limit be eliminated from the rulemaking. The implication of the rulemaking is that nobody is likely to need more than \$2500 in their transaction accounts, and we regard that as a false presumption, since there are times when balances may be very large: during critical financial periods like the sale of an existing home and purchase of a new home, for example. The fiduciary care of banks is, if anything, more important during these times than during normal times. We recommend the removal, suspension, or reconsideration of this \$2500 limit.

Thank you for your attention to our concerns.
Sincerely,

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.ccThe Honorable Barbara Boxer
The Honorable Diane Feinstein
The Honorable Dana Rohrbacher